

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH AND GAME

Call to Order: By **CHAIRMAN KEN MESAROS**, on February 18, 1999 at 3:15 P.M., in Room 402 Capitol.

ROLL CALL

Members Present:

Sen. Ken Mesaros, Chairman (R)
Sen. Mike Taylor, Vice Chairman (R)
Sen. Tom A. Beck (R)
Sen. Al Bishop (R)
Sen. William Crismore (R)
Sen. Steve Doherty (D)
Sen. Pete Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Eve Franklin (D)
Sen. Bea McCarthy (D)
Sen. Chuck Swysgood (R)
Sen. Jack Wells (R)

Members Excused: None.

Members Absent: None.

Staff Present: Leanne Kurtz, Legislative Branch
Adrienne Pillatzke, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: None., 2/18/1999
Executive Action: SB 329; SB 334; SB 335; SB
336; SB 337; SB 338; SB 339;
SB 340; SB 341; SB 445; SB
458; SB 418

EXECUTIVE ACTION ON SB 329

Motion: SEN. ELLINGSON moved that **AMENDMENT DO PASS.**

Discussion:

SENATOR ELLINGSON entered and explained amendment, **EXHIBIT(fis40a01)**.

SENATOR MCCARTHY complimented Senator Ellingson for giving a full year for the merchants to be aware of what is going on and that is positive in their favor.

SENATOR SWYSGOOD thanked Senator Ellingson for addressing the concerns of his and Senator Taylor. He knows it was difficult.

Vote: Motion **carried unanimously. 12-0.**

Motion/Vote: **SEN. ELLINGSON** moved that **SB 329 DO PASS AS AMENDED. Motion carried unanimously.**

{Tape : 1; Side : A; Approx. Time Counter : 5.7}

EXECUTIVE ACTION ON SB 334

Motion: **SEN. MESAROS** moved that **AMENDMENTS BE ADOPTED.**

Discussion:

Leanne Kurtz stated there were two separate amendments for SB 334 and the amendments for SB 335, SB 336, and SB 337 are included in the packet.

SENATOR MESAROS entered and explained the packet of amendments, **EXHIBIT(fis40a02)**. He stated after the hearing for SB 334 the Private Lands Public Wildlife Council, everybody who had amendments, and interested parties convened and came up with a consensus agreement. He believes there is a consensus agreement with the make up of the board of outfitting. He listed the consensus of amendments.

SENATOR CRISMORE referred to amendment SB033404.alk, #2 and asked if it would be a problem after the "and" and the "(c)" to make it big game hunting outfitting businesses. He said that would put it to an outfitter that is engaged in it rather than somebody that might be in fishing or bird hunting.

SENATOR BECK said he would agree. He would like to see it for big game.

SENATOR SWYSGOOD said they already got one hunting outfitter and one fishing outfitter and this is going to add another hunting

outfitter. He said the bill reads "two outfitters who are engaged in fishing and hunting right now".

SENATOR BECK said he doesn't want the outfitter to be engaged in fishing and bird hunting. He wants them to be engaged in fishing and big game hunting.

SENATOR MESAROS reminded the committee that this change was not agreed upon in the consensus meeting.

SENATOR BECK asked if the committee was aware that there are a lot of hunting outfitters out there that would be birds or whatever, isn't the intent of the bill to be for the guides that most of them will be fishing and big game hunting. **SENATOR SWYSGOOD** asked what is wrong with the other ones. **Allen Charles** said the committee was trying to ensure there was equal balance between hunting and fishing interest on the board with a clear recognition that many of the expansions that are currently occurring do involve bird hunting. He said it is a key issue that is not addressed in previous legislation. The committee focused more on making sure there was a nomination process in place to allow people to nominate the best people for the job. He does not think it was specific to big game hunting but rather to balance between hunting and fishing interest.

SENATOR BECK said as it reads now, you could have two fishing and bird hunting people on the board and totally bypass big game. **Allen Charles** replied not with the balance of the board where there is hunting only, fishing only and a combination. He said the key is to ensure the people are appointed that can represent the hunting issues and the fishing issues. **SENATOR BECK** said the hunting outfitter it doesn't say big game hunting there either, it could be a bird hunter.

SENATOR WELLS said if the department is worried that you are not going to get a big game at all then maybe you need to hear where it has been suggested or you need it in subparagraph "a" under #2 where it says "one hunting outfitter". He said somewhere it needs to specify big game and take the big game out of the fishing and hunting paragraph. **Allen Charles** said that would capture the committee's intent.

Substitute Motion/Vote: **SEN. BECK** made a substitute motion that **TO ADD ONE BIG GAME OUTFITTER INTO THE BILL BE ADOPTED.**
Substitute motion carried unanimously.

Vote: Motion that **AMENDMENT SB033404.alk BE ADOPTED** carried unanimously.

Motion: SEN. MESAROS moved that **AMENDMENT SB033402.alk BE ADOPTED.**

{Tape : 1; Side : A; Approx. Time Counter : 20.3}

Discussion:

SENATOR WELLS asked if #8 is where \$5,000 was taken out for the nonresident hunting outfitter. He wants to know what that is saying. **SENATOR SWYSGOOD** thinks it is saying they are taking the \$5,000 fee out and whatever the fee in that state that is applied to the Montana outfitter would apply to the nonresident outfitter.

Vote: Motion **carried unanimously.**

Motion/Vote: SEN. MESAROS moved that **AMENDMENT SB033501.alk BE ADOPTED. Motion carried unanimously.**

Motion/Vote: SEN. MESAROS moved that **AMENDMENT SB033601.alk BE ADOPTED. Motion carried unanimously.**

Motion/Vote: SEN. MESAROS moved that **SB 334 DO PASS AS AMENDED. Motion carried unanimously.**

EXECUTIVE ACTION ON SB 335, SB 336 AND SB 337

Motion: SEN. BECK moved that **SB 335, SB 336 AND SB 337 DO PASS AS AMENDED.**

Discussion:

SENATOR SWYSGOOD asked if there is anything in the bills since the fee was removed from the out-of-state that has to be addressed in one of the bills. **SENATOR MESAROS** believes it was taken care of in the amendments. **Leanne Kurtz** stated since it was a nonresident fee, it doesn't have to go to the voters.

Vote: Motion **carried unanimously.**

EXECUTIVE ACTION ON SB 338

{Tape : 1; Side : A; Approx. Time Counter : 26.2}

Leanne Kurtz entered packet of amendments, **EXHIBIT(fis40a03).**

Motion: SEN. MESAROS moved that **AMENDMENT SB033801.alk BE ADOPTED.**

Discussion:

SENATOR MCCARTHY referred to #5 and #6 which refer to fees. She asked why the fees are being lowered on habitat access fee and nonresident combination license fee. **Pat Graham** said the way it was drafted the fishing was helping pay for the block management program and the change was to separate out the fishing part it is not paying for the block management program.

Vote: Motion **carried unanimously.**

Motion: SEN. SWYSGOOD moved that **AMENDMENT SB033802.alk BE ADOPTED.**

Discussion:

SENATOR SWYSGOOD explained why he proposed the amendment.

Vote: Motion **carried unanimously.**

Motion: SEN. SWYSGOOD moved that **AMENDMENT SB033803.ALK BE ADOPTED.**

Discussion:

{Tape : 1; Side : A; Approx. Time Counter : 33.0}

SENATOR SWYSGOOD explained why he proposed the amendment.

SENATOR TAYLOR stated he proposed an amendment to follow this amendment that addresses his concern. He said the landowner should get a change at two before the lottery.

SENATOR BECK said there was a reason for the change from 20 to 10 and it was due to the fact that they were not giving enough licenses out. **SENATOR MESAROS** said they moved it from 20 to 10 for that reason and not only from the recommendations of the Private Land Public Wildlife Council and the FWP, he urged the committee to resist the amendment.

SENATOR BECK said as he understood it, some people are getting too many and others are getting any. **SENATOR SWYSGOOD** said he was trying to abide by what was agreed too early in the process.

SENATOR TAYLOR said Senator Beck is right and that was the concern. He said he would not need his amendment if the number stayed at 10. He would be concerned if they pass the 20 and give every landowner the opportunity to have two licenses.

SENATOR CRISMORE asked if the committee dropped the number to ten licenses if there were going to be more landowners eligible for the program or is going to cut the ones with twenty out. **Mr. Graham** replied any landowner that is eligible can sponsor hunters, not every landowner that is eligible sponsor a hunter. He said there is nothing in current law or any proposed changes that would affect the landowner's ability to sponsor a hunter. He said it is not going to affect the landowner's ability to sponsor, it affects the success rate of the people who do sponsor. He stated in 1998 there was 496 landowners who sponsored hunters but there were more than 1,000 who at one time have sponsored a hunter.

SENATOR CRISMORE said he doesn't understand that is was an agreement that was in writing that they are trying to change prior to the time the agreement changed. **SENATOR TAYLOR** said he doesn't charge for hunting and puts in two names into the drawing. He said in the last couple of years they have been unable to get a license and wants to even up the odds.

SENATOR BECK said someone felt the number was too high and someone was getting any and others were getting a lot of them. He said it was a consensus of the people who wanted the bill, who asked for ten. **SENATOR CRISMORE** stated it is not like it was an actual bill. He said this was a group of people that met to get a consensus and the landowners agreed they would get a maximum of twenty and that would last through the period of the bill.

SENATOR BECK asked if it was the department that saw one person was getting more licenses than anybody else. **Mr. Graham** replied it was a recommendation of the Private Land Public Wildlife Advisory Council not the department. He explained the issue and concerns of the bill and amendments proposed in 1995.

{Tape : 1; Side : B; Approx. Time Counter : 0}

SENATOR SWYSGOOD said the testimony indicated that they didn't want to become outfitters that wasn't their primary function. He said just because someone puts in 15-20 names to hunt on your land doesn't mean you are charging them a fee. He said there are ranchers that take part in the program who do not want to be an outfitter and abide by the rules and regulations that go along with being an outfitter.

SENATOR WELLS said he talked with some of the people who testified at the hearing and he asked them if the people who were drawing the landowner-sponsored licenses got 20 licenses. He didn't hear of anybody that got 20. People told them they were getting between 15 and 17 licenses. He wondered if the committee would settle for 15.

Substitute Motion/Vote: **SEN. WELLS** made a substitute motion that **REDUCE THE NUMBER TO 15 LICENSES BE ADOPTED. Substitute motion carried with Crismore, Swysgood and Taylor voting no.**

SENATOR SWYSGOOD asked Leanne Kurtz a question about his amendment.

Motion: **SEN. TAYLOR** moved that **AMENDMENT SB033804.alk BE ADOPTED.**

Discussion:

SENATOR TAYLOR stated he proposed the amendment because he thinks a landowner sponsor should have an opportunity to have a couple of friend be able to hunt. He explained the process in order to get a preference.

SENATOR WELLS asked what was the number of landowner sponsors that had at one time or another applied. **Mr. Graham** said it is more than 1,000. He said that year there where 496 landowners put in for 2,900 licenses and of those 52 did not get any. He said 93 landowners-sponsored 2 and the rest sponsored more than two. **SENATOR WELLS** said his concern is since there are only 2,000 licenses and the amendment proposed is mandatory. He doesn't want the landowners to be guaranteed two licenses because once they find out they are guaranteed then all landowners are going to ask for two and then all of the 2,000 licenses will be gone.

SENATOR BECK said 496 landowners times 2 licenses that equals 1,000 and that is half of the licenses gone.

SENATOR TAYLOR said what you are doing by giving the two licenses, you are giving it to the same guy that is putting in for 20 licenses.

Vote: Motion failed 3-8. Senator Ellingson was not present to vote.

Motion/Vote: **SEN. BECK** moved that **SB033901.alk, SB034001.alk, AND SB 034101.alk BE ADOPTED. Motion carried unanimously.**

EXECUTIVE ACTION ON SB 338, SB 339, SB 340 and SB 341

Motion/Vote: SEN. BECK moved that SB 338, DO PASS AS AMENDED.
Motion carried unanimously.

Motion/Vote: SEN. BECK moved that SB 339, SB 340, AND SB 341 DO
PASS AS AMENDED. Motion carried unanimously.

SENATOR MESAROS thanked everyone who met after the hearing to
come up with the amendments.

{Tape : 1; Side : B; Approx. Time Counter : 9.8}

EXECUTIVE ACTION ON SB 445

SENATOR SWYSGOOD entered amendment, **EXHIBIT(fis40a04)**.

Motion: SEN. SWYSGOOD moved that **AMENDMENT SB044501.alk BE
ADOPTED.**

Discussion:

SENATOR SWYSGOOD explained why the amendment has draft written on
it and purpose of the amendment.

SENATOR BECK stated commercial launches were being restricted on
the weekends so the public could float. It is struck out in the
bill and it now reads an outfitter will be limited to launches of
two boats per state or federal river access site per day. He
asked is that for every access site and what is being gained.

SENATOR MCCARTHY asked if the restriction on outfitters started
on the third Saturday in May where they may not launch on
Saturday or Sunday. SENATOR SWYSGOOD said yes in the heavy used
areas of the river. SENATOR MCCARTHY stated the bill reads in
#7, there is a minimum of 90 launches. She asked who is going to
monitor the 90 launches. SENATOR SWYSGOOD said it would be based
on the historical use that the outfitter has had a plan on file
which indicates the two rivers to be used. He said there was
some concern expressed by local people that they were being
denied the opportunity to use the river. He said this is a
compromise and everything sunsets after a river use plan is
established.

SENATOR TAYLOR asked if the bill limits the outfitters that are
there now, that no new outfitters could take advantage of the
plan as adopted. SENATOR SWYSGOOD said it would limit the
outfitting on the two rivers to all outfitters who had an

operation plan that included the two rivers on file as of January 1, 1999. If they did not have the two rivers in their plan then they are excluded from use of the rivers. **SENATOR TAYLOR** asked from now on. **SENATOR SWYSGOOD** replied until it sunsets or a recreational use plan is established. **SENATOR TAYLOR** asked if a study group could study the SB 418 problems. **SENATOR SWYSGOOD** said he is not receptive to the suggestion. The bill was brought by the people of his district and will live or die on its own merits.

SENATOR FRANKLIN asked Pat Graham for his question. **Pat Graham** referred to #7 of the amendments which states the termination which talks the implementing the new use limits based that plan. He asked if it was anticipated that additional legislation would be brought forward to do that. **SENATOR SWYSGOOD** replied yes. **Pat Graham** asked this legislation is not granting authority to implement that plan. **SENATOR SWYSGOOD** responded that was not the intent. He said the intent was to allow the two groups to work together. He said they added other recreation and interested parties to come up with a recreational use plan to be submitted to the FWP office. He said the plan has October 1, 2000 date which he is going to move to be changed to July 1, 2001. He thought that would be enough time to be reviewed and draft to legislation.

SENATOR MCCARTHY asked if Senator Swysgood is anticipating they are going to do something similar as they did on the Smith River. **SENATOR SWYSGOOD** said when a river has notoriety, because of the great numbers of people, this situation will occur. He said there has to be some type of use plan in place. He said he doesn't want to see it get like the Smith River. He said that is a reason for the dates on the outfitters are on there so that they could not rush out and get a license to make sure they could use the river. He said the bill is an attempt to buy some time so a plan can be established. However, pressure has been obvious and something has to be done. He said the outfitters were willing to be the first ones to set up and take the hit.

{Tape : 1; Side : B; Approx. Time Counter : 19.8}

SENATOR DOHERTY referred to the amendment which talked about other recreationists or other interested parties being part of this. He asked who is going to coordinate the group activity to try and get it done. **SENATOR SWYSGOOD** said it is in the bill and it is the Big Hole Watershed Group which is an existing consensus group made up of Trout Unlimited, Wildlife people, Fish and Game, Farmers, Ranchers. He stated when the Big Hole Watershed Group meets and the issues they work on. He said they would be the two forms that would be coordinate in all these efforts because they

are already in place in structure and have money to operate.

SENATOR DOHERTY said because of the importance of the rivers there may be some people from Great Falls who might want to come to the meetings and be involved. He said the language which states other recreation or interested parties acknowledge them.

SENATOR SWYSGOOD stated that is what it is in the bill for.

SENATOR DOHERTY asked if the management plan which would be adopted could reduce, as an option not that it would or it might increase or stay the same, the number of outfitted guided trips on the river. **SENATOR SWYSGOOD** replied it is a possibility when looking at the overall use pattern. He said maybe the farmer and rancher could reduce the usage of water. He said all of those things will be considered in putting together a plan. **SENATOR DOHERTY** stated he is asking the questions for the record. He asked if they are locking in certain number of outfitter trips per day in the management plan which the historical use may be an indicator but may also be a reduction. **SENATOR SWYSGOOD** responded he does not know what the operation plan will look like. He said all of those things will be on the table when establishing the plan and the result will be the consensus of the group of workers which would include everybody who had an interest in it.

SENATOR DOHERTY asked if Senator Swysgood foresee the outfitter rights to use the river being transferable among outfitters if they adopt the amendments and the bill is passed or is that an issue that is going too determined by the management plan.

SENATOR SWYSGOOD replied he would assume that could be part of the discussion because there is some concern with the young outfitters coming up whose fathers are guides and such. He said that is a concern that will have to be addressed. **SENATOR**

DOHERTY said it gets down to the liquor license quota system and we may be creating an incredibly valuable license. He asked once they create an incredibly valuable license and then try to reduce the licenses, what are they going to do when people come in and say they have done a takings. **SENATOR SWYSGOOD** stated that is

always a possibility when limiting use. He said he understands but also understands if something isn't done to address what is happening, there isn't going to be a resource for anybody to use.

SENATOR DOHERTY said that is what he is concerned about. He said just as long as those options are on the table and the outfitters understand from the beginning that there is a possibility that their launches may be reduced below the two per day per site because of the use of the river. He doesn't want there to be a river use management plan recommended to be adopted and the legislature tells the outfitters they are loving the river to death therefore their number of launches will be reduced. He said the fear is their demand for their income is going to out

weigh the public's demand to be able to float the river. **SENATOR SWYSGOOD** replied that is why the tried to put the weekend restriction in the bill because of that fact. He said he loves to fish but he doesn't go down to the river because he can't get close to where the good fishing is located.

SENATOR EKEGREN asked if the licenses could be transferable. He said licenses in franchises are not transferable and they are not worth a dime. He asked if it could be done here. **SENATOR DOHERTY** said Senator Ekegren's question goes with the questions he had asked. He referred to the liquor license and the incredible investments that people have.

SENATOR MCCARTHY said she believes the date of the bill should be effective on passage of the approval. **SENATOR SWYSGOOD** agreed with her. He asked Pat Graham for his response. **Pat Graham** referred to #7 terminations, he said the FWP does not have the authority to implement use limits but the use limits put in the bill terminate when the FWP sign the plan. He said if he has that authority and he signs the plan on the date then the bill does not exist. He said FWP does not have the authority to implement the plan only the legislature puts use limits in.

SENATOR BECK referred to line 22, the board. He asked what board is it. **SENATOR SWYSGOOD** replied it is the board of outfitters. He said they are the ones that control the guide license. **SENATOR BECK** said maybe it should be defined.

SENATOR MCCARTHY said there needs to be two date changes. **SENATOR SWYSGOOD** stated there needs to be a change for the date of effectiveness of the bill and a change when the FWP signs the bill.

SENATOR SWYSGOOD referred to the section of the bill which terminates the bill. He said there has to be something that makes an incentive to complete the plan and get the issues addressed. **Pat Graham** said to strike on page 2, amendment 7, section 3, line 3, where it states "the Department of Fish Wildlife and Parks implements" and put in "the legislature adopts". **SENATOR SWYSGOOD** said it does not address all the concerns of the public but does give a starting point.

SENATOR MCCARTHY asked if an amendment is needed to put the passage of approval. **SENATOR SWYSGOOD** asked if they could put it all on the current amendment. **Leanne Kurtz** replied yes it could be done.

SENATOR SWYSGOOD stated he would like to add to the amendment that a change on line 21, page 2, October 1, 2000 to July 1, 2001. He said that would be the time that the group has to submit a plan to the FWP.

SENATOR MCCARTHY asked when salmon hatching is and if it cover that time. **SENATOR SWYSGOOD** replied in the end of June and it covers the salmon hatch.

{Tape : 1; Side : B; Approx. Time Counter : 38.3}

Vote: Motion carried 11-1 with Bishop voting no.

Motion/Vote: SEN. SWYSGOOD moved that SB 445 DO PASS AS AMENDED. Motion passed 10-2 with Bishop and Doherty voting no.

EXECUTIVE ACTION ON SB 458

Motion: SEN. TAYLOR moved that SB 458 DO PASS.

Discussion:

SENATOR BECK asked if there were any amendments for the bill. **Leanne Kurtz** said she did not receive any amendments.

{Tape : 2; Side : A; Approx. Time Counter : 0}

Pat Graham said the money that use to go to the Department of FWP now goes into the General Fund. **SENATOR TAYLOR** asked the money goes into the General Fund. **Mr. Graham** said the restitution money goes into the General Fund and the sponsor's intent is the restitution money would go into the Higher Education and Law Enforcement Programs.

SENATOR WELLS reminded the committee of his big sheep story where it didn't bother the hunter to kill an illegal sheep because the fine wasn't much more than the tag. He supports the bill.

SENATOR TAYLOR concurred with Senator Wells. He referred to the chart which shows the fines in other states. He said it is hard to go out and kill a sheep by accident.

SENATOR BECK asked if someone picks up a set of sheep antlers is it a \$30,000 fine. **Pat Graham** replied it is a misdemeanor.

SENATOR BECK said if they found them in the wilderness and were put on their property. **Mr. Graham** said it is natural shedding

and there is no fine. **SENATOR BECK** understood that you could not pick up sheep horns in the state.

SENATOR SWYSGOOD referred to the fiscal note. He said the money always went to the General Fund and now it is going to into the hunter education program where there already is money. He said the bill does have an impact of the general fund.

Motion: SEN. SWYSGOOD moved that **STRIKE LINE 14 IN IT'S ENTIRETY AND REINSERT "GENERAL FUND" IN LINE 13, PAGE 6. BE AMENDED.**

Discussion:

SENATOR DOHERTY opposed the amendment. He said they are talking about people profiting from Wildlife. He said if there were more enforcement and have more game wardens out there maybe there would be less poaching. He said it is a fish and game violation and the money should go back to the FWP.

SENATOR CRISMORE doesn't know how they can say it is going to be used for enforcement because they don't know when they are going to get it or how.

Vote: Motion **carried 8-4 with Bishop, Doherty, Ellingson and Franklin voting no.**

SENATOR BECK asked what is the penalty in illegally shooting a big horn sheep. **Pat Graham** referred to page 5.

SENATOR BECK stated he would like to see it put in over a couple of years. He would like to see it go to 15, 4, 3, 4, 1.

SENATOR EKEGREN said he thought grizzly bears were more than \$2,000 in current law. **Mr. Graham** said under federal law it is a lot more which includes jail time.

Vote: Motion **carried 11-1 with Beck voting no.**

{Tape : 2; Side : A; Approx. Time Counter : 6.9}

EXECUTIVE ACTION ON SB 418

Motion: SEN. SWYSGOOD moved that **SB 418 DO PASS.**

Discussion:

SENATOR SWYSGOOD said he knows not everybody support SB 418. He discussed why there is a need for the bill.

SENATOR BECK referred to the diagram from Bill Holden. He said the bill does not deny anyone from access to the river from the bridge. He said the floaters would park their vehicles in front of the gate entering private property. He asked who has the authority to do anything about it. The county does not have authority. He has the same thing happening to him. He said the bill says nothing unless people get on private property.

SENATOR ELLINGSON said he isn't sure that is what the bill is saying. He is hearing in that particular instance the man believes the land is public property, and it is public property only in the sense that there is a public easement crossing. He believes SB 418 is saying if it is only an easement that it is inappropriately for somebody to park on that right of way and go down to the river on the right of way. He thinks Senator Beck is saying there is access but he understands there would not be access under an easement. **SENATOR SWYSGOOD** stated not all easement were 60 feet. He said some early county roads easements were 30 feet. He said the only use on the early easements were the repair and maintenance of the bridge. He said now they are using the easement to access the river. He explained how the issue came about in Madison County. He said the bill is defining where an easement is and what the easement was intended to be used for.

SENATOR BISHOP asked to page 2, line 20 be explained and what if there is a 60-foot access and the bridge is only 40 feet wide.

SENATOR BECK replied his understanding of the road width is it is 30 feet wide both ways from the middle. **SENATOR BISHOP** would like to have somebody bring a right-of-way grant to a road and start it having 10-20 feet to maintain the easement. **SENATOR BECK** said he gets a right of way for an irrigation ditch through someone else's property. **SENATOR BISHOP** said if the bridge is only 40 feet wide it says the right of way width is the width of the bridge itself. **SENATOR BECK** said that is what is written in the bill.

SENATOR SWYSGOOD stated the statute says the width of all county roads, except bridges, alleys, or lanes, must be 60 feet unless a greater or smaller width is order by the border of County Commissioners. He discussed bridges in his area where there is a lot of one lane bridge on county roads.

SENATOR BISHOP asked Senator Ellingson and Senator Doherty for their opinions. **SENATOR ELLINGSON** said he believes each one of the easements were either condemned or it was negotiated. He

guessed each one has a width established in it. He has a problem, with legislatively saying, the width is such when in the document it creates the easement, it is something else.

SENATOR DOHERTY agreed with Senator Ellingson. He said they have to look at individual easement. You would need a title company for every stream crossing in Montana for every county road to figure that out. He said the bill says it doesn't matter what is said in the document. It says the right-of-way at the road at the bridge is the width of the bridge itself. He said that may not be the case.

SENATOR EKEGREN asked if it would be possible to amend the bill to let the county deal with the different kind of right of ways.

SENATOR WELLS said the issue is not easy to solve in this committee. He stated he supports property rights and he agreed with what Senator Swysgood brought forth on the stand point of property right. However, he also supports all the sportsman and fishermen in the state that have been using these access sites for many years. He said the mail indicates the fishermen have been under the impression that there is open space there which is their right to use. He thinks a group should be established of FWP, sportsman, landowners and land surveyors to study the bridges from county to county. There should be four types of posting for the bridges. He feels for both the landowner and the sportsmen.

{Tape : 2; Side : A; Approx. Time Counter : 23.0}

SENATOR TAYLOR asked if a study was established, would the FWP withdraw the request for a ruling from the Attorney General. **Pat Graham** replied even with a study, someone still has to make a determination on the bridges. He said there is an issue of law that is not resolved and a study is not going to resolve the issue.

SENATOR FRANKLIN said 6-8 months is a long time for a ruling but she thinks the Attorney General's office wants to make a ruling just hasn't had time due to CI-75.

SENATOR BECK asked if a study group was established, would the FWP withdraw the request until after the study results were made. Then after the study, there could be some legislation that might address the problem. **Mr. Graham** doesn't understand what the group of people would do. He doesn't think the proposal by Senator Wells could be done. **SENATOR BECK** asked what brought on the Stream Access Law. **Mr. Graham** believed the Stream Access Bill was in the 1983 Legislation and not acted on. He said there

were two Supreme Court cases, between 1983-1985, that made a determination that the waters of the state were open for public access between the highwater marks for recreation. He said legislation was put in place to implement the Supreme Court decisions. **SENATOR BECK** asked who brought the cases to the Supreme Court. **Mr. Graham** replied the landowners appealed it to the Supreme Court. **SENATOR BECK** said they lost to the Supreme Court and that is when the Stream Access came into place. He said they are heading in the same direction. He doesn't think an Attorney General's opinion is going to help the matter either until a court determines exactly whether they have the opportunity to reach the stream by the bridge or not.

SENATOR WELLS said when he thought about the study he didn't discount the legal aspects. He thought there would have to be legal representation on the study. He is sure on every bridge there is legal application of the law but he thinks every bridge is different.

SENATOR SWYSGOOD said the committee is missing the whole issue. He said you talk about an easement. He said an amount of land was given by a landowner to a county for a thoroughfare. Some of the thoroughfares have bridges on them. He said whatever is filed in the county record telling what the easement is, that is the width of the easement. He said the question is if the easement ever intended on the private land, that the road isn't on but part of the easement, to give an access point to the river.

SENATOR ELLINGSON agreed with Senator Swysgood's definition of what the question is and his analysis but disagreed in analyzing the problem for a couple of reasons. One problem is when the easements were acquired for right-of-way. It was within the agreement of the parties that a traveler could use the right-of-way to water themselves or livestock. There would be access to the streams for those purposes. Second, there is a concept that rights by an easement can be obtained by prescription, by a period of use. The public has acquired rights by reason of prescription over the easements to have fishing access and to have access to the waters. He said it doesn't mean that fisherman and boaters have a right to off the right of way onto private property. He agreed with Senator Well's suggestion of a study. **SENATOR SWYSGOOD** appreciated his comments. He said it is being presumed the land on the right of way going down to the river to access the stream is public property. He said the bridge width is the width of the bridge itself and those uses incidental to the maintenance and the upkeep of the bridge.

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SENATOR WELLS said the prescription which Senator Ellingson mention is the area which the public is convinced they have rights. He hasn't heard of a lot of landowners who are saying this is a big problem. A solution needs to be found that meets the requirements of the law and be satisfactory for the landowners but not cut off the sportsman.

SENATOR TAYLOR said he afraid there is going to be an uproar from the public if this bill is passed.

Vote: Motion failed 5-7 with Bishop, Doherty, Ellingson, Franklin, McCarthy, Wells and Taylor voting no.

Motion/Vote: SEN. BECK moved that SB 418 BE TABLED. Motion carried 7-5 with Beck, Crismore, Ekegren, Swysgood, and Mesaros voting no.

ADJOURNMENT

Adjournment: 5:30 P.M.

SEN. KEN MESAROS, Chairman

ADRIENNE PILLATZKE, Secretary

KM/AP

EXHIBIT (fis40aad)